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Conference Engrossed

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

SENATE BILL 1310

AN ACT

AMENDING SECTION 42-2003, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 27, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO MODEL NONPARTICIPATING MANUFACTURERS LEGISLATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-2003, Arizona Revised Statutes, is amended to
3 read:

4 42-2003. Authorized disclosure of confidential information

5 A. Confidential information relating to:

6 1. A taxpayer may be disclosed to the taxpayer, its successor in
7 interest or a designee of the taxpayer who is authorized in writing by the
8 taxpayer. A principal corporate officer of a parent corporation may execute
9 a written authorization for a controlled subsidiary.

10 2. A corporate taxpayer may be disclosed to any principal officer, any
11 person designated by a principal officer or any person designated in a
12 resolution by the corporate board of directors or other similar governing
13 body.

14 3. A partnership may be disclosed to any partner of the partnership.
15 This exception does not include disclosure of confidential information of a
16 particular partner unless otherwise authorized.

17 4. An estate may be disclosed to the personal representative of the
18 estate and to any heir, next of kin or beneficiary under the will of the
19 decedent if the department finds that the heir, next of kin or beneficiary
20 has a material interest which will be affected by the confidential
21 information.

22 5. A trust may be disclosed to the trustee or trustees, jointly or
23 separately, and to the grantor or any beneficiary of the trust if the
24 department finds that the grantor or beneficiary has a material interest
25 which will be affected by the confidential information.

26 6. Any taxpayer may be disclosed if the taxpayer has waived any rights
27 to confidentiality either in writing or on the record in any administrative
28 or judicial proceeding.

29 7. The name and taxpayer identification numbers of persons issued
30 direct payment permits may be publicly disclosed.

31 B. Confidential information may be disclosed to:

32 1. Any employee of the department whose official duties involve tax
33 administration.

34 2. The office of the attorney general solely for its use in
35 preparation for, or in an investigation which may result in, any proceeding
36 involving tax administration before the department or any other agency or
37 board of this state, or before any grand jury or any state or federal court.

38 3. The department of liquor licenses and control for its use in
39 determining whether a spirituous liquor licensee has paid all transaction
40 privilege taxes and affiliated excise taxes incurred as a result of the sale
41 of spirituous liquor at the licensed establishment and imposed on the
42 licensed establishments by this state and its political subdivisions.

43 4. Other state tax officials whose official duties require the
44 disclosure for proper tax administration purposes if the information is
45 sought in connection with an investigation or any other proceeding conducted

1 by the official. Any disclosure is limited to information of a taxpayer who
2 is being investigated or who is a party to a proceeding conducted by the
3 official.

4 5. The following agencies, officials and organizations, if they grant
5 substantially similar privileges to the department for the type of
6 information being sought, pursuant to statute and a written agreement between
7 the department and the foreign country, agency, state, Indian tribe or
8 organization:

9 (a) The United States internal revenue service, United States bureau
10 of alcohol, tobacco and firearms, United States drug enforcement agency and
11 federal bureau of investigation.

12 (b) A state tax official of another state.

13 (c) An organization of states that operates an information exchange
14 for tax administration purposes.

15 (d) An agency, official or organization of a foreign country with
16 responsibilities that are comparable to those listed in subdivision (a), (b)
17 or (c) of this paragraph.

18 (e) An agency, official or organization of an Indian tribal government
19 with responsibilities comparable to the responsibilities of the agencies,
20 officials or organizations identified in subdivision (a), (b) or (c) of this
21 paragraph.

22 6. The auditor general, in connection with any audit of the department
23 subject to the restrictions in section 42-2002, subsection C.

24 7. Any person to the extent necessary for effective tax administration
25 in connection with:

26 (a) The processing, storage, transmission, destruction and
27 reproduction of the information.

28 (b) The programming, maintenance, repair, testing and procurement of
29 equipment for purposes of tax administration.

30 8. The office of administrative hearings relating to taxes
31 administered by the department pursuant to section 42-1101, but the
32 department shall not disclose any confidential information:

33 (a) Regarding income tax, withholding tax or estate tax.

34 (b) On any tax issue relating to information associated with the
35 reporting of income tax, withholding tax or estate tax.

36 9. The United States treasury inspector general for tax administration
37 for the purpose of reporting a violation of internal revenue code section
38 7213A (26 United States Code section 7213A), unauthorized inspection of
39 returns or return information.

40 10. The financial management service of the United States treasury
41 department for use in the treasury offset program.

42 C. Confidential information may be disclosed in any state or federal
43 judicial or administrative proceeding pertaining to tax administration if the
44 taxpayer is a party to the proceeding.

1 D. Identity information may be disclosed for purposes of notifying
2 persons entitled to tax refunds if the department is unable to locate the
3 persons after reasonable effort.

4 E. The department, upon the request of any person, shall provide the
5 names and addresses of bingo licensees as defined in section 5-401 or verify
6 whether or not a person has a privilege license and number or withholding
7 license and number.

8 F. A department employee, in connection with the official duties
9 relating to any audit, collection activity or civil or criminal
10 investigation, may disclose return information to the extent that disclosure
11 is necessary to obtain information which is not otherwise reasonably
12 available. These official duties include the correct determination of and
13 liability for tax, the amount to be collected or the enforcement of other
14 state tax revenue laws.

15 G. If an organization is exempt from this state's income tax as
16 provided in section 43-1201 for any taxable year, the name and address of the
17 organization and the application filed by the organization upon which the
18 department made its determination for exemption together with any papers
19 submitted in support of the application and any letter or document issued by
20 the department concerning the application are open to public inspection.

21 H. Confidential information relating to transaction privilege tax, use
22 tax, severance tax, jet fuel excise and use tax and rental occupancy tax may
23 be disclosed to any county, city or town tax official if the information
24 relates to a taxpayer who is or may be taxable by the county, city or town.
25 Any taxpayer information released by the department to the county, city or
26 town:

27 1. May only be used for internal purposes.

28 2. May not be disclosed to the public in any manner that does not
29 comply with confidentiality standards established by the department. The
30 county, city or town shall agree in writing with the department that any
31 release of confidential information that violates the confidentiality
32 standards adopted by the department will result in the immediate suspension
33 of any rights of the county, city or town to receive taxpayer information
34 under this subsection.

35 I. The department may disclose statistical information gathered from
36 confidential information if it does not disclose confidential information
37 attributable to any one taxpayer. In order to comply with the requirements
38 of section 42-5029, subsection A, paragraph 3, the department may disclose to
39 the state treasurer statistical information gathered from confidential
40 information, even if it discloses confidential information attributable to a
41 taxpayer.

42 J. The department may disclose the aggregate amounts of any tax
43 credit, tax deduction or tax exemption enacted after January 1, 1994.
44 Information subject to disclosure under this subsection shall not be

1 disclosed if a taxpayer demonstrates to the department that such information
2 would give an unfair advantage to competitors.

3 K. Except as provided in section 42-2002, subsection B, confidential
4 information, described in section 42-2001, paragraph 2, subdivision (a), item
5 (iii), may be disclosed to law enforcement agencies for law enforcement
6 purposes.

7 L. The department may provide transaction privilege tax license
8 information to property tax officials in a county for the purpose of
9 identification and verification of the tax status of commercial property.

10 M. The department may provide transaction privilege tax, luxury tax,
11 use tax, property tax and severance tax information to the ombudsman-citizens
12 aide pursuant to title 41, chapter 8, article 5.

13 N. Except as provided in section 42-2002, subsection C, a court may
14 order the department to disclose confidential information pertaining to a
15 party to an action. An order shall be made only upon a showing of good cause
16 and that the party seeking the information has made demand upon the taxpayer
17 for the information.

18 O. This section does not prohibit the disclosure by the department of
19 any information or documents submitted to the department by a bingo licensee.
20 Before disclosing the information the department shall obtain the name and
21 address of the person requesting the information.

22 P. If the department is required or permitted to disclose confidential
23 information, it may charge the person or agency requesting the information
24 for the reasonable cost of its services.

25 Q. Except as provided in section 42-2002, subsection C, the department
26 of revenue shall release confidential information as requested by the
27 department of economic security pursuant to section 42-1122 or 46-291.
28 Information disclosed under this subsection is limited to the same type of
29 information that the United States internal revenue service is authorized to
30 disclose under section 6103(l)(6) of the internal revenue code.

31 R. To comply with the requirements of section 42-5031, the department
32 may disclose to the state treasurer, to the county stadium district board of
33 directors and to any city or town tax official that is part of the county
34 stadium district confidential information attributable to a taxpayer's
35 business activity conducted in the county stadium district.

36 S. The department shall release confidential information as requested
37 by the attorney general for purposes of determining compliance with and
38 enforcing section 44-7101, the master settlement agreement referred to
39 therein and subsequent agreements to which the state is a party that amend or
40 implement the master settlement agreement. Information disclosed under this
41 subsection is limited to luxury tax information relating to tobacco
42 manufacturers, distributors, wholesalers and retailers and information
43 collected by the department pursuant to section 44-7101(2)(j).

44 T. For proceedings before the department, the office of administrative
45 hearings, the board of tax appeals or any state or federal court involving

1 penalties that were assessed against a return preparer or electronic return
2 preparer pursuant to section 42-1103.02 or 42-1125.01, confidential
3 information may be disclosed only before the judge or administrative law
4 judge adjudicating the proceeding, the parties to the proceeding and the
5 parties' representatives in the proceeding prior to its introduction into
6 evidence in the proceeding. The confidential information may be introduced
7 as evidence in the proceeding only if the taxpayer's name, the names of any
8 dependents listed on the return, all social security numbers, the taxpayer's
9 address, the taxpayer's signature and any attachments containing any of the
10 foregoing information are redacted and if either:

11 1. The treatment of an item reflected on such return is or may be
12 related to the resolution of an issue in the proceeding.

13 2. Such return or return information relates or may relate to a
14 transactional relationship between a person who is a party to the proceeding
15 and the taxpayer which directly affects the resolution of an issue in the
16 proceeding.

17 U. THE DEPARTMENT MAY DISCLOSE TO THE ATTORNEY GENERAL CONFIDENTIAL
18 INFORMATION RECEIVED UNDER SECTION 44-7111 AND REQUESTED BY THE ATTORNEY
19 GENERAL FOR PURPOSES OF DETERMINING COMPLIANCE WITH AND ENFORCING SECTION
20 44-7111. THE DEPARTMENT AND ATTORNEY GENERAL SHALL SHARE WITH EACH OTHER THE
21 INFORMATION RECEIVED UNDER SECTION 44-7111, AND MAY SHARE THE INFORMATION
22 WITH OTHER FEDERAL, STATE OR LOCAL AGENCIES ONLY FOR THE PURPOSES OF
23 ENFORCEMENT OF SECTION 44-7101, SECTION 44-7111 OR CORRESPONDING LAWS OF
24 OTHER STATES.

25 Sec. 2. Title 44, chapter 27, Arizona Revised Statutes, is amended by
26 adding article 2, to read:

27 ARTICLE 2. MODEL NONPARTICIPATING MANUFACTURERS LEGISLATION

28 44-7111. Tobacco; nonparticipating manufacturers; civil
29 penalty; violation; classification

30 THIS STATE ENACTS THE MODEL NONPARTICIPATING MANUFACTURERS LEGISLATION
31 AS FOLLOWS:

32 SECTION 1. FINDINGS AND PURPOSE.

33 THE LEGISLATURE FINDS THAT VIOLATIONS OF SECTION 44-7101 THREATEN THE
34 INTEGRITY OF THE TOBACCO MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF
35 THE STATE AND THE PUBLIC HEALTH. THE LEGISLATURE FINDS THAT ENACTING
36 PROCEDURAL ENHANCEMENTS WILL AID THE ENFORCEMENT OF SECTION 44-7101 AND
37 THEREBY SAFEGUARD THE MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF
38 THE STATE AND THE PUBLIC HEALTH.

39 SECTION 2. DEFINITIONS.

40 (a) "BRAND FAMILY" MEANS ALL STYLES OF CIGARETTES SOLD UNDER THE SAME
41 TRADE MARK AND DIFFERENTIATED FROM ONE ANOTHER BY MEANS OF ADDITIONAL
42 MODIFIERS OR DESCRIPTORS, INCLUDING, BUT NOT LIMITED TO, "MENTHOL", "LIGHTS",
43 "KINGS" AND "100S", AND INCLUDES ANY BRAND NAME (ALONE OR IN CONJUNCTION WITH
44 ANY OTHER WORD), TRADEMARK, LOGO, SYMBOL, MOTTO, SELLING MESSAGE,
45 RECOGNIZABLE PATTERN OF COLORS OR ANY OTHER INDICIA OF PRODUCT IDENTIFICATION

1 IDENTICAL OR SIMILAR TO, OR IDENTIFIABLE WITH, A PREVIOUSLY KNOWN BRAND OF
2 CIGARETTES.

3 (b) "CIGARETTE" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7101.

4 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

5 (d) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

6 (e) "DISTRIBUTOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-3001.

7 (f) "MASTER SETTLEMENT AGREEMENT" HAS THE SAME MEANING PRESCRIBED IN
8 SECTION 44-7101.

9 (g) "NONPARTICIPATING MANUFACTURER" MEANS ANY TOBACCO PRODUCT
10 MANUFACTURER THAT IS NOT A PARTICIPATING MANUFACTURER.

11 (h) "PARTICIPATING MANUFACTURER" HAS THE MEANING GIVEN THAT TERM IN
12 SECTION II(JJ) OF THE MASTER SETTLEMENT AGREEMENT AND ALL AMENDMENTS THERETO.

13 (i) "QUALIFIED ESCROW FUND" HAS THE SAME MEANING PRESCRIBED IN SECTION
14 44-7101.

15 (j) "TOBACCO PRODUCT MANUFACTURER" HAS THE SAME MEANING PRESCRIBED IN
16 SECTION 44-7101.

17 (k) "UNITS SOLD" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7101.

18 SECTION 3. CERTIFICATIONS; DIRECTORY; TAX STAMPS.

19 (a) CERTIFICATION. EVERY TOBACCO PRODUCT MANUFACTURER WHOSE
20 CIGARETTES ARE SOLD IN THIS STATE, WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR,
21 RETAILER OR SIMILAR INTERMEDIARY OR INTERMEDIARIES, SHALL EXECUTE AND DELIVER
22 ON A FORM PRESCRIBED BY THE ATTORNEY GENERAL A CERTIFICATION TO THE DIRECTOR
23 AND ATTORNEY GENERAL NOT LATER THAN THE THIRTIETH DAY OF APRIL EACH YEAR,
24 CERTIFYING THAT, AS OF THE DATE OF THE CERTIFICATION, THE TOBACCO PRODUCT
25 MANUFACTURER EITHER IS A PARTICIPATING MANUFACTURER OR IS IN FULL COMPLIANCE
26 WITH SECTION 44-7101, SECTION 3(b), INCLUDING ALL QUARTERLY INSTALLMENT
27 PAYMENTS REQUIRED BY REGULATIONS AS MAY BE PROMULGATED BY THE ATTORNEY
28 GENERAL PURSUANT TO SECTION 5(f) OF THIS ARTICLE.

29 (1) A PARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS CERTIFICATION A
30 LIST OF ITS BRAND FAMILIES. THE PARTICIPATING MANUFACTURER SHALL UPDATE THE
31 LIST THIRTY DAYS PRIOR TO ANY ADDITION TO OR MODIFICATION OF ITS BRAND
32 FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL CERTIFICATION TO THE
33 ATTORNEY GENERAL AND DIRECTOR.

34 (2) A NONPARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS CERTIFICATION
35 (I) A LIST OF ALL OF ITS BRAND FAMILIES AND THE NUMBER OF UNITS SOLD FOR EACH
36 BRAND FAMILY THAT WERE SOLD IN THE STATE DURING THE PRECEDING CALENDAR YEAR,
37 (II) A LIST OF ALL OF ITS BRAND FAMILIES THAT HAVE BEEN SOLD IN THE STATE AT
38 ANY TIME DURING THE CURRENT CALENDAR YEAR, (III) INDICATING BY AN ASTERISK,
39 ANY BRAND FAMILY SOLD IN THE STATE DURING THE PRECEDING CALENDAR YEAR THAT IS
40 NO LONGER BEING SOLD IN THE STATE AS OF THE DATE OF THE CERTIFICATION AND
41 (IV) IDENTIFYING BY NAME AND ADDRESS ANY OTHER MANUFACTURER OF THE BRAND
42 FAMILIES IN THE PRECEDING OR CURRENT CALENDAR YEAR. THE NONPARTICIPATING
43 MANUFACTURER SHALL UPDATE THE LIST THIRTY CALENDAR DAYS PRIOR TO ANY ADDITION
44 TO OR MODIFICATION OF ITS BRAND FAMILIES BY EXECUTING AND DELIVERING A
45 SUPPLEMENTAL CERTIFICATION TO THE ATTORNEY GENERAL AND DIRECTOR.

1 (3) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE CERTIFICATION
2 SHALL FURTHER CERTIFY:

3 (A) THAT THE NONPARTICIPATING MANUFACTURER IS REGISTERED TO DO
4 BUSINESS IN THE STATE OR HAS APPOINTED A RESIDENT AGENT FOR SERVICE OF
5 PROCESS AND PROVIDED NOTICE THEREOF AS REQUIRED BY SECTION 4.

6 (B) THAT THE NONPARTICIPATING MANUFACTURER (I) HAS ESTABLISHED AND
7 CONTINUES TO MAINTAIN A QUALIFIED ESCROW FUND AND (II) HAS EXECUTED A
8 QUALIFIED ESCROW AGREEMENT THAT HAS BEEN REVIEWED AND APPROVED BY THE
9 ATTORNEY GENERAL AND THAT GOVERNS THE QUALIFIED ESCROW FUND.

10 (C) THAT THE NONPARTICIPATING MANUFACTURER IS IN FULL COMPLIANCE WITH
11 SECTION 44-7101, SECTION (3)(b) AND THIS ARTICLE, AND ANY REGULATIONS
12 PROMULGATED PURSUANT THERETO;

13 (D) (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE FINANCIAL
14 INSTITUTION WHERE THE NONPARTICIPATING MANUFACTURER HAS ESTABLISHED THE
15 QUALIFIED ESCROW FUND REQUIRED PURSUANT TO SECTION 44-7101, SECTION 3(b) AND
16 ALL REGULATIONS PROMULGATED PURSUANT THERETO, (II) THE ACCOUNT NUMBER OF THE
17 QUALIFIED ESCROW FUND AND ANY SUBACCOUNT NUMBER FOR THE STATE, (III) THE
18 AMOUNT THE NONPARTICIPATING MANUFACTURER PLACED IN THE FUND FOR CIGARETTES
19 SOLD IN THE STATE DURING THE PRECEDING CALENDAR YEAR, THE DATE AND AMOUNT OF
20 EACH DEPOSIT AND SUCH EVIDENCE OR VERIFICATION AS MAY BE DEEMED NECESSARY BY
21 THE ATTORNEY GENERAL TO CONFIRM THE FOREGOING AND (IV) THE AMOUNT OF AND DATE
22 OF ANY WITHDRAWAL OR TRANSFER OF FUNDS THE NONPARTICIPATING MANUFACTURER MADE
23 AT ANY TIME FROM THE FUND OR FROM ANY OTHER QUALIFIED ESCROW FUND INTO WHICH
24 IT EVER MADE ESCROW PAYMENTS PURSUANT TO SECTION 44-7101, SECTION 3(b) AND
25 ALL REGULATIONS PROMULGATED PURSUANT THERETO.

26 (4) A TOBACCO PRODUCT MANUFACTURER MAY NOT INCLUDE A BRAND FAMILY IN
27 ITS CERTIFICATION UNLESS (I) IN THE CASE OF A PARTICIPATING MANUFACTURER, THE
28 PARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS TO BE DEEMED TO
29 BE ITS CIGARETTES FOR PURPOSES OF CALCULATING ITS PAYMENTS UNDER THE MASTER
30 SETTLEMENT AGREEMENT FOR THE RELEVANT YEAR, IN THE VOLUME AND SHARES
31 DETERMINED PURSUANT TO THE MASTER SETTLEMENT AGREEMENT, AND (II) IN THE CASE
32 OF A NONPARTICIPATING MANUFACTURER, THE NONPARTICIPATING MANUFACTURER AFFIRMS
33 THAT THE BRAND FAMILY IS TO BE DEEMED TO BE ITS CIGARETTES FOR PURPOSES OF
34 SECTION 44-7101, SECTION 3(b). NOTHING IN THIS SECTION SHALL BE CONSTRUED AS
35 LIMITING OR OTHERWISE AFFECTING THE STATE'S RIGHT TO MAINTAIN THAT A BRAND
36 FAMILY CONSTITUTES CIGARETTES OF A DIFFERENT TOBACCO PRODUCT MANUFACTURER FOR
37 PURPOSES OF CALCULATING PAYMENTS UNDER THE MASTER SETTLEMENT AGREEMENT OR FOR
38 PURPOSES OF SECTION 44-7101.

39 (5) TOBACCO PRODUCT MANUFACTURERS SHALL MAINTAIN ALL INVOICES AND
40 DOCUMENTATION OF SALES AND OTHER INFORMATION RELIED UPON FOR THE
41 CERTIFICATION FOR A PERIOD OF FIVE YEARS, UNLESS OTHERWISE REQUIRED BY LAW TO
42 MAINTAIN THEM FOR A GREATER PERIOD OF TIME.

1 (b) DIRECTORY OF CIGARETTES APPROVED FOR STAMPING AND SALE. NOT LATER
2 THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE ATTORNEY
3 GENERAL SHALL DEVELOP AND PUBLISH ON THE ATTORNEY GENERAL'S WEB SITE A
4 DIRECTORY LISTING ALL TOBACCO PRODUCT MANUFACTURERS THAT HAVE PROVIDED
5 CURRENT AND ACCURATE CERTIFICATIONS CONFORMING TO THE REQUIREMENTS OF
6 SECTION 3(a) AND ALL BRAND FAMILIES THAT ARE LISTED IN THOSE CERTIFICATIONS
7 (THE "DIRECTORY"), EXCEPT AS NOTED BELOW.

8 (1) THE ATTORNEY GENERAL SHALL NOT INCLUDE OR RETAIN IN THE DIRECTORY
9 THE NAME OR BRAND FAMILIES OF ANY NONPARTICIPATING MANUFACTURER THAT FAILS TO
10 PROVIDE THE REQUIRED CERTIFICATION OR WHOSE CERTIFICATION THE ATTORNEY
11 GENERAL DETERMINES IS NOT IN COMPLIANCE WITH SECTIONS 3(a)(2) AND (3), UNLESS
12 THE ATTORNEY GENERAL HAS DETERMINED THAT THE VIOLATION HAS BEEN CURED TO THE
13 SATISFACTION OF THE ATTORNEY GENERAL.

14 (2) NEITHER A TOBACCO PRODUCT MANUFACTURER NOR BRAND FAMILY SHALL BE
15 INCLUDED OR RETAINED IN THE DIRECTORY IF THE ATTORNEY GENERAL CONCLUDES, IN
16 THE CASE OF A NONPARTICIPATING MANUFACTURER, THAT (I) ANY ESCROW PAYMENT
17 REQUIRED PURSUANT TO SECTION 44-7101, SECTION 3(b) FOR ANY PERIOD FOR ANY
18 BRAND FAMILY, WHETHER OR NOT LISTED BY THE NONPARTICIPATING MANUFACTURER, HAS
19 NOT BEEN FULLY PAID INTO A QUALIFIED ESCROW FUND GOVERNED BY A QUALIFIED
20 ESCROW AGREEMENT THAT HAS BEEN APPROVED BY THE ATTORNEY GENERAL, OR (II) ANY
21 OUTSTANDING FINAL JUDGMENT, INCLUDING INTEREST THEREON, FOR A VIOLATION OF
22 SECTION 44-7101 HAS NOT BEEN FULLY SATISFIED FOR THE BRAND FAMILY OR THE
23 MANUFACTURER.

24 (3) THE ATTORNEY GENERAL SHALL UPDATE THE DIRECTORY AS NECESSARY IN
25 ORDER TO CORRECT MISTAKES AND TO ADD OR REMOVE A TOBACCO PRODUCT MANUFACTURER
26 OR BRAND FAMILY TO KEEP THE DIRECTORY IN CONFORMITY WITH THE REQUIREMENTS OF
27 THIS ARTICLE.

28 (4) A DISTRIBUTOR THAT HAS LAWFULLY AFFIXED STAMPS TO CIGARETTES AND
29 SUBSEQUENTLY IS UNABLE TO SELL THOSE CIGARETTES LAWFULLY BECAUSE THE
30 CIGARETTES HAVE BEEN REMOVED FROM THE DIRECTORY PURSUANT TO SECTION 3(b)(2)
31 OF THIS ARTICLE, MAY APPLY TO THE DEPARTMENT FOR A REFUND OF THE COST OF SUCH
32 STAMPS.

33 (5) EVERY DISTRIBUTOR SHALL PROVIDE AND UPDATE AS NECESSARY AN
34 ELECTRONIC MAIL ADDRESS TO THE DIRECTOR AND ATTORNEY GENERAL FOR THE PURPOSE
35 OF RECEIVING ANY NOTIFICATIONS AS MAY BE REQUIRED BY THIS ARTICLE.

36 (6) A TOBACCO PRODUCT MANUFACTURER INCLUDED IN THE DIRECTORY MAY
37 REQUEST THAT A NEW BRAND FAMILY BE ADDED TO THE DIRECTORY BY EXECUTING AND
38 DELIVERING A SUPPLEMENTAL CERTIFICATION WITH THE NECESSARY INFORMATION TO THE
39 ATTORNEY GENERAL AND THE DIRECTOR. NOT LATER THAN FORTY-FIVE BUSINESS DAYS
40 AFTER RECEIVING SUCH A REQUEST, AND AT SUCH EARLIER TIME AS IS REASONABLE TO
41 DO SO, THE ATTORNEY GENERAL SHALL EITHER (I) CERTIFY THE NEW BRAND FAMILY OR
42 (II) DENY THE REQUEST. HOWEVER, IN CASES WHERE THE ATTORNEY GENERAL
43 REASONABLY DETERMINES THAT IT NEEDS ADDITIONAL INFORMATION TO ASCERTAIN
44 WHETHER THE REQUESTOR IS THE TOBACCO PRODUCT MANUFACTURER OF THE NEW BRAND
45 FAMILY, THE ATTORNEY GENERAL MAY TAKE WHATEVER ADDITIONAL TIME IS REASONABLY

1 NEEDED TO PROCESS THE REQUEST, TO LOCATE AND ASSEMBLE INFORMATION OR
2 DOCUMENTS NEEDED TO PROCESS THE REQUEST, AND TO NOTIFY PERSONS OR AGENCIES
3 AFFECTED BY THE REQUEST.

4 (c) PROHIBITION AGAINST STAMPING OR SALE OF CIGARETTES NOT IN THE
5 DIRECTORY. IT SHALL BE UNLAWFUL FOR ANY PERSON (1) TO AFFIX A STAMP TO A
6 PACKAGE OR OTHER CONTAINER OF CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR
7 BRAND FAMILY NOT INCLUDED IN THE DIRECTORY OR (2) TO SELL, OFFER OR POSSESS
8 FOR SALE, IN THIS STATE, CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR
9 BRAND FAMILY NOT INCLUDED IN THE DIRECTORY.

10 SECTION 4. AGENT FOR SERVICE OF PROCESS.

11 (a) REQUIREMENT FOR AGENT FOR SERVICE OF PROCESS. ANY NONRESIDENT OR
12 FOREIGN NONPARTICIPATING MANUFACTURER THAT HAS NOT REGISTERED TO DO BUSINESS
13 IN THE STATE AS A FOREIGN CORPORATION OR BUSINESS ENTITY SHALL, AS A
14 CONDITION PRECEDENT TO HAVING ITS BRAND FAMILIES INCLUDED OR RETAINED IN THE
15 DIRECTORY, APPOINT AND CONTINUALLY ENGAGE WITHOUT INTERRUPTION THE SERVICES
16 OF AN AGENT IN THIS STATE TO ACT AS AGENT FOR THE SERVICE OF PROCESS ON WHOM
17 ALL PROCESS, AND ANY ACTION OR PROCEEDING AGAINST IT CONCERNING OR ARISING
18 OUT OF THE ENFORCEMENT OF THIS ARTICLE AND SECTION 44-7101, MAY BE SERVED IN
19 ANY MANNER AUTHORIZED BY LAW. SUCH SERVICE ON THE AGENT CONSTITUTES LEGAL
20 AND VALID SERVICE OF PROCESS ON THE NONPARTICIPATING MANUFACTURER. THE
21 NONPARTICIPATING MANUFACTURER SHALL PROVIDE THE NAME, ADDRESS, PHONE NUMBER
22 AND PROOF OF THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO AND TO THE
23 SATISFACTION OF THE ATTORNEY GENERAL.

24 (b) THE NONPARTICIPATING MANUFACTURER SHALL PROVIDE NOTICE TO THE
25 ATTORNEY GENERAL THIRTY CALENDAR DAYS PRIOR TO TERMINATION OF THE AUTHORITY
26 OF AN AGENT AND SHALL FURTHER PROVIDE PROOF TO THE SATISFACTION OF THE
27 ATTORNEY GENERAL OF THE APPOINTMENT OF A NEW AGENT NOT LESS THAN FIVE
28 CALENDAR DAYS PRIOR TO THE TERMINATION OF AN EXISTING AGENT APPOINTMENT. IN
29 THE EVENT AN AGENT TERMINATES AN AGENCY APPOINTMENT, THE NONPARTICIPATING
30 MANUFACTURER SHALL NOTIFY THE ATTORNEY GENERAL OF THE TERMINATION WITHIN FIVE
31 CALENDAR DAYS AND SHALL INCLUDE PROOF TO THE SATISFACTION OF THE ATTORNEY
32 GENERAL OF THE APPOINTMENT OF A NEW AGENT.

33 (c) ANY NONPARTICIPATING MANUFACTURER WHOSE CIGARETTES ARE SOLD IN
34 THIS STATE AND WHO HAS NOT APPOINTED AND ENGAGED AN AGENT AS HEREIN REQUIRED
35 SHALL BE DEEMED TO HAVE APPOINTED THE SECRETARY OF STATE AS THE AGENT AND MAY
36 BE PROCEEDED AGAINST IN COURTS OF THIS STATE BY SERVICE OF PROCESS UPON THE
37 SECRETARY OF STATE; PROVIDED, HOWEVER, THAT THE APPOINTMENT OF THE SECRETARY
38 OF STATE AS THE AGENT SHALL NOT SATISFY THE CONDITION PRECEDENT TO HAVING THE
39 BRAND FAMILIES OF THE NONPARTICIPATING MANUFACTURER INCLUDED OR RETAINED IN
40 THE DIRECTORY.

41 SECTION 5. REPORTING OF INFORMATION; ESCROW INSTALLMENTS.

42 (a) REPORTING BY DISTRIBUTORS. NOT LATER THAN TWENTY CALENDAR DAYS
43 AFTER THE END OF EACH CALENDAR QUARTER, AND MORE FREQUENTLY IF SO DIRECTED BY
44 THE DIRECTOR, EACH DISTRIBUTOR SHALL SUBMIT SUCH INFORMATION AS THE DIRECTOR
45 REQUIRES TO FACILITATE COMPLIANCE WITH THIS ARTICLE, INCLUDING, BUT NOT

1 LIMITED TO, A LIST BY BRAND FAMILY OF THE TOTAL NUMBER OF CIGARETTES OR, IN
2 THE CASE OF ROLL YOUR OWN, THE EQUIVALENT STICK COUNT, FOR WHICH THE
3 DISTRIBUTOR AFFIXED STAMPS DURING THE PREVIOUS CALENDAR QUARTER OR OTHERWISE
4 PAID THE TAX DUE FOR THE CIGARETTES. THE DISTRIBUTOR SHALL MAINTAIN, AND
5 MAKE AVAILABLE TO THE DIRECTOR AND THE ATTORNEY GENERAL, ALL INVOICES AND
6 DOCUMENTATION OF SALES OF ALL NONPARTICIPATING MANUFACTURER CIGARETTES AND
7 ANY OTHER INFORMATION RELIED UPON IN REPORTING TO THE DIRECTOR FOR A PERIOD
8 OF FIVE YEARS.

9 (b) DISCLOSURE OF INFORMATION. THE DEPARTMENT IS AUTHORIZED TO
10 DISCLOSE TO THE ATTORNEY GENERAL ANY INFORMATION RECEIVED UNDER THIS ARTICLE
11 AND REQUESTED BY THE ATTORNEY GENERAL FOR PURPOSES OF DETERMINING COMPLIANCE
12 WITH AND ENFORCING THE PROVISIONS OF THIS ARTICLE. THE DEPARTMENT AND
13 ATTORNEY GENERAL SHALL SHARE WITH EACH OTHER THE INFORMATION RECEIVED UNDER
14 THIS ARTICLE, AND MAY SHARE THE INFORMATION WITH OTHER FEDERAL, STATE OR
15 LOCAL AGENCIES ONLY FOR PURPOSES OF ENFORCEMENT OF THIS ARTICLE, SECTION
16 44-7101 OR CORRESPONDING LAWS OF OTHER STATES.

17 (c) IF A TOBACCO PRODUCT MANUFACTURER REQUIRED TO ESTABLISH A
18 QUALIFIED ESCROW FUND UNDER SECTION 44-7101, SECTION 3(b) DISPUTES THE
19 ATTORNEY GENERAL'S DETERMINATION OF THE AMOUNT THAT THE MANUFACTURER IS
20 REQUIRED TO DEPOSIT INTO ESCROW AND THE ATTORNEY GENERAL DETERMINES THAT THE
21 DISPUTE CAN LIKELY BE RESOLVED BY INFORMATION CONTAINED IN REPORTS SUBMITTED
22 BY DISTRIBUTORS TO THE DEPARTMENT INDICATING SALES OR PURCHASES OF THE
23 MANUFACTURER'S CIGARETTES, THEN THE ATTORNEY GENERAL SHALL PRODUCE THE
24 RELEVANT PORTIONS OF THE REPORTS TO THE MANUFACTURER. HOWEVER, BEFORE
25 DISCLOSING THE FOREGOING INFORMATION, THE ATTORNEY GENERAL MAY REQUIRE THE
26 MANUFACTURER TO PROVIDE ALL RECORDS RELATED TO ITS SALES OF THE CIGARETTES IN
27 DISPUTE. THE DISCLOSURE PROVIDED BY THE ATTORNEY GENERAL TO A TOBACCO
28 PRODUCT MANUFACTURER PURSUANT TO THIS SUBSECTION SHALL BE LIMITED TO
29 INFORMATION CONCERNING THE CIGARETTES ALLEGED BY THE STATE TO BE SUBJECT TO
30 THE REQUIREMENTS OF SECTION 44-7101, SECTION 3(b), MAY BE USED BY THE
31 MANUFACTURER ONLY FOR THE LIMITED PURPOSE OF DETERMINING THE APPROPRIATE
32 ESCROW DEPOSIT, AND MAY NOT BE DISCLOSED BY THE MANUFACTURER TO ANY THIRD
33 PARTIES.

34 (d) VERIFICATION OF QUALIFIED ESCROW FUND. THE ATTORNEY GENERAL MAY
35 REQUIRE AT ANY TIME FROM THE NONPARTICIPATING MANUFACTURER, PROOF FROM THE
36 FINANCIAL INSTITUTION IN WHICH THE MANUFACTURER HAS ESTABLISHED A QUALIFIED
37 ESCROW FUND FOR THE PURPOSE OF COMPLIANCE WITH SECTION 44-7101, SECTION 3(b)
38 OF THE AMOUNT OF MONEY IN THE FUND, EXCLUSIVE OF INTEREST, THE AMOUNT AND THE
39 DATE OF EACH DEPOSIT TO THE FUND, AND THE AMOUNT AND DATE OF EACH WITHDRAWAL
40 FROM THE FUND.

41 (e) REQUESTS FOR ADDITIONAL INFORMATION. IN ADDITION TO THE
42 INFORMATION REQUIRED TO BE SUBMITTED PURSUANT TO THIS ARTICLE, THE DIRECTOR
43 AND ATTORNEY GENERAL MAY REQUIRE A DISTRIBUTOR OR TOBACCO PRODUCT
44 MANUFACTURER TO SUBMIT ANY ADDITIONAL INFORMATION INCLUDING, BUT NOT LIMITED
45 TO, SAMPLES OF THE PACKAGING OR LABELING OF EACH BRAND FAMILY, AS IS

1 NECESSARY TO ENABLE THE ATTORNEY GENERAL TO DETERMINE WHETHER A TOBACCO
2 PRODUCT MANUFACTURER IS IN COMPLIANCE WITH THIS ARTICLE.

3 (f) QUARTERLY ESCROW INSTALLMENTS. TO PROMOTE COMPLIANCE WITH THE
4 PROVISIONS OF THIS ARTICLE, THE ATTORNEY GENERAL MAY PROMULGATE REGULATIONS
5 REQUIRING TOBACCO PRODUCT MANUFACTURERS SUBJECT TO THE REQUIREMENTS OF
6 SECTION 3(a)(2) TO MAKE THE ESCROW DEPOSITS REQUIRED IN QUARTERLY
7 INSTALLMENTS DURING THE YEAR IN WHICH THE SALES COVERED BY THE DEPOSITS ARE
8 MADE:

9 (1) IN CIRCUMSTANCES WHERE THE ATTORNEY GENERAL REASONABLY CONCLUDES
10 THAT A MANUFACTURER MAY NOT FULLY AND TIMELY COMPLY WITH SECTION 44-7101,
11 SECTION 3(b).

12 (2) WHERE MANUFACTURERS HAVE NOT MADE ESCROW DEPOSITS PURSUANT TO
13 SECTION 44-7101, SECTION 3(b) DURING THE PRECEDING CALENDAR YEAR.
14 THE ATTORNEY GENERAL MAY REQUIRE PRODUCTION OF INFORMATION SUFFICIENT TO
15 ENABLE THE ATTORNEY GENERAL TO DETERMINE THE ADEQUACY OF THE AMOUNT OF THE
16 INSTALLMENT DEPOSIT.

17 SECTION 6. PENALTIES AND OTHER REMEDIES.

18 (a) LICENSE REVOCATION AND CIVIL PENALTY. IN ADDITION TO OR IN LIEU
19 OF ANY OTHER CIVIL OR CRIMINAL REMEDY PROVIDED BY LAW, UPON A DETERMINATION
20 THAT A DISTRIBUTOR HAS VIOLATED SECTION 3(c) OR ANY REGULATION ADOPTED
21 PURSUANT TO THIS ARTICLE, THE DIRECTOR MAY REVOKE OR SUSPEND THE LICENSE OF
22 THE DISTRIBUTOR IN THE MANNER PROVIDED BY TITLE 41, CHAPTER 6, ARTICLE 10 FOR
23 CONTESTED CASES. EACH STAMP AFFIXED AND EACH SALE OR OFFER TO SELL
24 CIGARETTES IN VIOLATION OF SECTION 3(c) SHALL CONSTITUTE A SEPARATE
25 VIOLATION. THE DIRECTOR MAY ALSO IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO
26 EXCEED THE GREATER OF FIVE HUNDRED PER CENT OF THE RETAIL VALUE OF THE
27 CIGARETTES OR FIVE THOUSAND DOLLARS UPON A DETERMINATION OF VIOLATION OF
28 SECTION 3(c) OR ANY REGULATIONS PROMULGATED PURSUANT THERETO. THE PENALTY
29 SHALL BE IMPOSED IN THE MANNER PROVIDED BY TITLE 41, CHAPTER 6, ARTICLE 10
30 FOR CONTESTED CASES.

31 (b) CONTRABAND AND SEIZURE. ANY CIGARETTES THAT HAVE BEEN SOLD,
32 OFFERED FOR SALE OR POSSESSED FOR SALE IN THIS STATE IN VIOLATION OF
33 SECTION 3(c) SHALL BE DEEMED CONTRABAND AND THE CIGARETTES SHALL BE SUBJECT
34 TO SEIZURE BY THE DEPARTMENT AND FORFEITURE, AND ALL THE CIGARETTES SO SEIZED
35 AND FORFEITED SHALL BE DESTROYED AND NOT RESOLD.

36 (c) INJUNCTION. THE ATTORNEY GENERAL, ON BEHALF OF THE DIRECTOR, MAY
37 SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF
38 SECTION 3(c), 5(a) OR 5(d) BY A DISTRIBUTOR AND TO COMPEL THE DISTRIBUTOR TO
39 COMPLY WITH THOSE SECTIONS. IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION,
40 THE STATE SHALL BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION, COSTS OF
41 THE ACTION AND REASONABLE ATTORNEY FEES.

1 (d) UNLAWFUL SALE AND DISTRIBUTION. IT SHALL BE UNLAWFUL FOR A PERSON
2 TO (I) SELL OR DISTRIBUTE CIGARETTES, OR (II) ACQUIRE, HOLD, OWN, POSSESS,
3 TRANSPORT, IMPORT OR CAUSE TO BE IMPORTED CIGARETTES, THAT THE PERSON KNOWS
4 OR SHOULD KNOW ARE INTENDED FOR DISTRIBUTION OR SALE IN THE STATE IN
5 VIOLATION OF SECTION 3(c). A VIOLATION OF THIS SECTION IS A CLASS 1
6 MISDEMEANOR.

7 (e) DECEPTIVE TRADE PRACTICE. A PERSON WHO VIOLATES SECTION 3(c)
8 ENGAGES IN AN UNLAWFUL PRACTICE IN VIOLATION OF SECTION 44-1522. STANDING TO
9 BRING AN ACTION TO ENFORCE TITLE 44, CHAPTER 10, ARTICLE 7 FOR VIOLATION OF
10 SECTION 3(c) SHALL LIE SOLELY WITH THE ATTORNEY GENERAL.

11 SECTION 7. MISCELLANEOUS PROVISIONS.

12 (a) NOTICE AND REVIEW OF DETERMINATION. A DETERMINATION OF THE
13 ATTORNEY GENERAL TO NOT INCLUDE OR TO REMOVE FROM THE DIRECTORY A BRAND
14 FAMILY OR TOBACCO PRODUCT MANUFACTURER SHALL BE SUBJECT TO REVIEW AS AN
15 APPEALABLE AGENCY ACTION IN THE MANNER PRESCRIBED BY TITLE 41, CHAPTER 6,
16 ARTICLE 10.

17 (b) DATES. FOR THE YEAR 2003, THE FIRST REPORT OF DISTRIBUTORS
18 REQUIRED BY SECTION 5(a) SHALL BE DUE THIRTY CALENDAR DAYS AFTER THE
19 EFFECTIVE DATE OF THIS ARTICLE. THE CERTIFICATIONS BY A TOBACCO PRODUCT
20 MANUFACTURER DESCRIBED IN SECTION 3(a) SHALL BE DUE FORTY-FIVE CALENDAR DAYS
21 AFTER THE EFFECTIVE DATE AND THE DIRECTORY DESCRIBED IN SECTION 3(b) SHALL BE
22 PUBLISHED OR MADE AVAILABLE WITHIN NINETY CALENDAR DAYS AFTER THE EFFECTIVE
23 DATE.

24 (c) PROMULGATION OF REGULATIONS. THE DEPARTMENT AND THE ATTORNEY
25 GENERAL MAY PROMULGATE REGULATIONS NECESSARY TO EFFECT THE PURPOSES OF THIS
26 ARTICLE.

27 (d) RECOVERY OF COSTS AND FEES BY ATTORNEY GENERAL. IN ANY ACTION
28 BROUGHT BY THE STATE TO ENFORCE THIS ARTICLE, THE STATE SHALL BE ENTITLED TO
29 RECOVER THE COSTS OF INVESTIGATION, EXPERT WITNESS FEES, COSTS OF THE ACTION
30 AND REASONABLE ATTORNEY FEES.

31 (e) DISGORGEMENT OF PROFITS FOR VIOLATIONS OF ARTICLE. IF A COURT
32 DETERMINES THAT A PERSON HAS VIOLATED THIS ARTICLE, THE COURT SHALL ORDER ANY
33 PROFITS, GAIN, GROSS RECEIPTS OR OTHER BENEFIT FROM THE VIOLATION TO BE
34 DISGORGED AND PAID TO THE STATE GENERAL FUND. UNLESS OTHERWISE EXPRESSLY
35 PROVIDED, THE REMEDIES OR PENALTIES PROVIDED BY THIS ARTICLE ARE CUMULATIVE
36 TO EACH OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS
37 OF THIS STATE.

38 (f) CONSTRUCTION AND SEVERABILITY. IF A COURT OF COMPETENT
39 JURISDICTION FINDS THAT THE PROVISIONS OF THIS ARTICLE AND SECTION 44-7101
40 CONFLICT AND CANNOT BE HARMONIZED, THEN THE PROVISIONS OF SECTION 44-7101
41 SHALL CONTROL. IF ANY SECTION, SUBSECTION, SUBDIVISION, PARAGRAPH, SENTENCE,
42 CLAUSE OR PHRASE OF THIS ARTICLE CAUSES SECTION 44-7101 TO NO LONGER
43 CONSTITUTE A QUALIFYING OR MODEL STATUTE, AS THOSE TERMS ARE DEFINED IN THE
44 MASTER SETTLEMENT AGREEMENT, THEN THAT PORTION OF THIS ARTICLE SHALL NOT BE
45 VALID. IF ANY SECTION, SUBSECTION, SUBDIVISION, PARAGRAPH, SENTENCE, CLAUSE

1 OR PHRASE OF THIS ARTICLE IS FOR ANY REASON HELD TO BE INVALID, UNLAWFUL OR
2 UNCONSTITUTIONAL, THE DECISION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING
3 PORTIONS OF THIS ARTICLE OR ANY PART THEREOF.

4 Sec. 3. Emergency

5 This act is an emergency measure that is necessary to preserve the
6 public peace, health or safety and is operative immediately as provided by
7 law.